IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1137 of 2006.

Reserved on: 08.08.2007.

Decided on: 08.10.2007.

Hari Chand and Others. … … Petitioners.

Versus

The State of H.P. & Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioners: **Mr. G.D. Verma Sr. Advocate with Mr. B.C. Verma, Advocate.**

For Respondents No.1 & 2: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**

For respondent No.3: **Mr. Neeraj Gupta, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid by the petitioners to the order passed by the Financial Commissioner (Appeals), dated 7.8.2006.

The brief facts necessary for the adjudication of this petition are that the respondent No.3 filed an application on 16.1.1997 before the Land Reforms Officer for resumption of land measuring 0-21-21, Kuhli Abbal. The Land Reforms Officer

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[1] *Whether reporters of local papers may be allowed to see the judgment? No.*

passed the order on 3.12.1997 in favour of respondent No.3. The petitioners feeling aggrieved by the order passed by the Land Reforms Officer preferred an appeal before the Collector (A.D.M.). The appeal was rejected by the Collector on 29.7.1999. Feeling aggrieved by the order dated 29.7.1999, the petitioners preferred an appeal before the Divisional Commissioner, Kangra Division at Dharamshala. The appeal preferred by the petitioners was accepted by the Divisional Commissioner on 18.10.2004. The respondent No.3 feeling aggrieved by the order passed by the Divisional Commissioner, Kangra Division at Dharamshala preferred a revision petition before the Financial Commissioner (Appeals). The Financial Commissioner (Appeal) accepted the revision on 7.8.2006.

Mr. G.D. Verma, the learned Senior Advocate had strenuously argued that the application preferred by the respondent No.3 before the Land Reforms Officer was barred by limitation since before joining the Army, the respondent No.3 had attained the age of majority as per the certificate issued by the school authorities giving his date of birth as 28.5.1955. He had alternatively argued that even if his date of birth is taken as 18.12.1959, the application was to be preferred by the respondent No.3 before 27.6.1978 and by no stretch of imaginations it could be filed on 16.1.1997. Mr. G.D. Verma then contended that the petitioners have not been heard before the passing of the order by the Land Reforms Officer on 3.12.1997. The learned Advocate General appearing on behalf of

respondents No.1 and 2 and Mr. Neeraj Gupta, appearing on behalf of respondent No.3 have supported the order passed by the Financial Commissioner, dated 7.8.2006.

I have heard the learned counsel for the parties and perused the record.

The application has been preferred by respondent No.3 on 16.1.1997. The order was passed by the Land Reforms Officer on 23.11.1997 directing the issuance of summons to the petitioners for appearance on 3.12.1997. Consequently, the Process-Server visited the petitioners on 2.12.1997 and had made the endorsement on the back side of the summons that the marriage of the son of Shri Hari Chand was being solemnized and he was told by the petitioners that they were accompanying the **barat** (marriage party), and thus, could not be available on 3rd December, 1997 and they be granted further date to enable them to attend the proceedings. The Land Reforms Officer despite the endorsement having been made by the Process-Server, Shri Amar Singh, dated 2nd December, 1997 has passed the order in favour of respondent No.3 on 3rd December, 1997. The Divisional Commissioner, Kangra Division at Dharamshala has categorically returned the finding that the petitioners were not present on 3rd December, 1997 and in their absence the order dated 3rd December, 1997 could not be passed. The Financial Commissioner (Appeals) in his order dated 7.8.2006 has failed to take into consideration that the petitioners were not heard before passing of the order dated 3.12.1997 by the Land Reforms

Officer. The observation made by the Financial Commissioner is that the matter cannot be re-opened on the minor issue of selection of area or whether one of the respondents was properly served or not. This finding recorded by the Financial Commissioner (Appeals) is against the principles of natural justice. It is settled-law that any order which has the civil consequences, is required to be passed in conformity with the principles of natural justice. The Financial Commissioner though had perused the record, but has over-looked the very essential fact, i.e. the report of the Process-Server, dated 2.12.1997. It was incumbent upon the Land Reforms Officer to give the next date of hearing due to the reason assigned in the report of the Process-Server, dated 2.12.1997 instead of deciding the matter on 3rd December, 1997 itself.

Accordingly, it is held that the order dated 3.12.1997 was vitiated for non-compliance with the principles of natural justice. Consequently, the subsequent orders passed by the Collector, dated 29.7.1999 and Financial Commissioner, dated 7.8.2006 affirming the order dated 3.12.1997 are also void ab initio. The order passed by the Divisional Commissioner, Kangra Division at Dharamshala dated 18.10.2004 is liable to be up-held.

Consequently, the order dated 7.8.2006 passed by the Financial Commissioner (Appeals) is quashed and set aside and the matter is remanded back to the Land Reforms Officer, Kangra to decide the matter afresh after hearing the parties.

Since the Court has remanded the matter back to the Land Reforms Officer to decide the matter afresh after hearing the parties, this Court need not go into the merits of the contention raised by Mr. G.D. Verma with regard to the delay in approaching the Land Reforms officer by the respondent No.3. However, the parties are permitted to lead evidence to support their respective assertions whether the application filed before the Land Reforms Officer on 16.1.1997 was within limitation as per the provisions of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 and the Rules framed thereunder. To avoid delay, the parties are directed to make themselves available before the Land Reforms Officer, Kangra, Tehsil and District Kangra on 6th November, 2007.

The writ petition is disposed of on the basis of the observations made hereinabove, but with no order as to costs.

(Rajiv Sharma), Judge.

October 08, 2007 *(sck).*